



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DIRECTIVE

on the supervision and control of shipments of radioactive waste and nuclear spent fuel

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. JUSTIFICATION OF THE PROPOSAL

The revision process of Directive 92/3/Euratom of 3 February 1992 on the supervision and control of shipments of radioactive waste between Member States and into and out of the Community was initiated in 2001 in the context of the fifth phase of the SLIM initiative (Simpler Legislation for Internal Market; SLIM V), with a view to making Directive 92/3 Euratom more user-friendly and transparent. See the Report from the Commission on the Outcome of the 5th Phase of SLIM¹.

Modifications in the provisions of Directive 92/3 are justified by four different reasons:

- Consistency with latest Euratom Directives: Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation², and Council Directive 2003/122/Euratom of 22 December 2003 on the control of high-activity sealed radioactive sources and orphan sources, in particular the wording of the provisions on reshipment of radioactive sealed sources.
- Consistency with international Conventions, in particular in view of the ongoing accession of the European Atomic Energy Community (Euratom) to the IAEA Joint Convention on the Safety of Spent fuel Management and on the Safety of Radioactive Waste Management (thereinafter “Joint Convention”).
- Clarifying the procedure in practice and improving the Directive structure.
- Extension of the scope to spent fuel. Under Directive 92/3, spent fuel for which no use is foreseen is considered as “radioactive waste” and shipments of such materials are subject to the uniform control procedure laid down in the Directive. Shipments of spent fuel for reprocessing are on the contrary not subject to such a procedure. This leads to the inconsistency that the same material is or is not subject to this procedure depending on its intended use.

The SLIM report recognised “that the example of the Joint Convention on Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management would suggest that the scope of the Directive be extended to cover also spent nuclear fuel for reprocessing”. No direct recommendation was however made, because the SLIM team considered this as “going beyond its mandate in the framework of the SLIM V initiative”.

The Opinion of the European Economic and Social Committee on the Proposal submitted by the Commission endorsed the extension of the scope to shipments of spent fuel for reprocessing (see point 5 below).

In view of the foregoing circumstances, and because from a radiological point of view there would be no reason not to apply the procedure laid down in Directive 92/3 to all shipments of

¹ Commission Staff Working Paper, Simpler Legislation for the Internal Market (SEC (2001)1977), transmitted to the Council and the European Parliament on 5th December 2001.

² OJ L 159, 29.6.1996, p. 1

spent fuel, it is deemed appropriate to extend the scope of the Directive as explained. The administrative burden for those shipments of spent fuel which would concern only Member States who have concluded an agreement that this will be for the purpose of reprocessing can be kept very low.

2. SUBSIDIARITY AND PROPORTIONALITY

While the Community is responsible for establishing uniform rules in the radiation protection field in order to achieve a high level of health protection of workers and the general public, it falls on the Member States to transpose into their national legislation such rules and to implement them.

When considering the existing requirements concerning shipments between Member States, there is no ambiguity as to the roles of the Community and the Member States under the existing system of prior authorisation and control of shipments of radioactive waste laid down by Directive 92/3.

This proposal for a Directive does not fundamentally modify this existing prior authorisation system. The task of controlling shipments through a specific mechanism remains within the competence of Member States.

3. COSTS OF IMPLEMENTING THE PROPOSAL FOR MEMBER STATES AND THE COMMUNITY

3.1. Costs to the Member States

The proposed amendments do not modify the existing scheme under Directive 92/3. The fact of extending the procedure also to shipments of spent fuel intended for reprocessing should not imply considerable extra costs to the Member States, the costs being easily absorbed by the administrative infrastructures already in place.

The procedure being now clarified in some key aspects (certainty concerning spent fuel, generalisation of automatic consent, use of languages, user-friendly structure of the Directive provisions, etc.), the new Directive will allow delays to be avoided in carrying out shipments, thus reducing their administrative cost.

3.2. Costs to operators

The extension of the authorisation procedure also to shipments of spent fuel intended for reprocessing should not imply additional costs to nuclear operators, as shipments of this kind are already covered in the Member States by some kind of administrative procedure on the basis of Directive 96/29.

The procedure being now clarified in some key aspects (certainty concerning spent fuel, generalisation of automatic consent, use of languages, user friendly structure of the Directive provisions, etc), the new Directive will allow delays to be avoided in carrying out shipments, which is beneficial to the operators concerned.

3.3. Costs to the Community

There will be no impact on the Community budget.

The various obligations upon the Commission arising from this Directive (concerning reporting, establishment and updating of standard document, publication of lists of authorities) already exist on the basis of Directive 92/3.

Similarly, the Advisory Committee to be set up under Article 16 corresponds to the Committee which already exists under Article 19 of Directive 92/3.

4. CONSULTATIONS WITH INTERESTED PARTIES

The representatives of the competent authorities in charge of the implementation of Directive 92/3 Euratom (Committee provided for in Article 19 of Directive 92/3) were consulted on the draft revision of the Directive at a meeting held on 18 October 2002.

The Group of Scientific Experts provided for in Article 31 Euratom was consulted on the revision of Directive 92/3 during its meeting on December 2002 and gave its support to it.

During the first semester of 2005, the Commission also received informal feed-back on the draft proposal from the national authorities and from the industry.

5. CONSULTATION OF THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE (EESC)

The Commission submitted on 12th November 2004 to the EESC, for opinion, the Proposal for a Council Directive on the supervision and control of shipments of radioactive waste and spent fuel, adopted on the same day (COM(2004) 716 final).

The EESC delivered its opinion on 8th June 2005. It supported the revision of the Directive undertaken by the Commission and welcomed the generalisation of the automatic consent procedure.

It however drew the Commission's attention to the need to redefine the rules on transit, in order to ensure their compatibility with the principles of the nuclear common market, in particular as far as shipments of spent fuel for reprocessing are concerned.

It further asked for clarifying the rules on imports and exports and to redefine more precisely the grounds entitling a state of transit or destination to refuse consent.

6. PROVISIONS OF THE PROPOSAL

6.1. Subject matter and scope (Article 1)

Article 1(1): For reasons of legislative technique, the purpose of the Directive is now clearly stated. This Directive supplements Directive 96/29/Euratom, under which Member States have set out a system of reporting and authorisation of practices involving a risk from ionising radiation, and its purpose is thus consistent with those in Directive 96/29: health protection.

Article 1(2): The provision in Article 1(1) of Directive 92/3 has been reworded so that:

It takes into account the new conditions set in Articles 3.2 (a) and (b) of Directive 96/29/Euratom (quantities and concentration of radionuclides). A dynamic reference to this Directive is made.

It is clarified so as to cover shipments involving the same country of origin and of destination, when such a shipment concerns a different country of transit.

Shipments of spent fuel not considered as waste are now also subject to the procedures laid down in the Directive.

Article 1(3): This corresponds to the contents of Article 13 of Directive 92/3, concerning disused sources but its wording has been simplified and adapted to the provisions of Directive 2003/122. This exemption now covers all shipments of disused sources to a supplier, manufacturer or recognised installation (as described in Article 3(2)(a) of Directive 2003/122, as a part of the safe management of the source when it is no longer used), and not just the cases where the source is “returned by its user to the supplier of the source in another country”, as under Directive 92/3.

The right place of this provision seems to be Article 1, as it delimits the scope of the Directive.

6.2. Reshipments related to processing and reprocessing operations (Article 2)

The provision in Article 14 of Directive 92/3 has now been moved to Article 2. The term “waste” has been replaced by “radioactive waste”. The words “exported” have been replaced by “shipped”, in order to also cover those reshipments from a Member State to another Member State. It is considered that, similarly to the case of the reshipping after reprocessing, the right to return the radioactive waste after treatment also covers “other products of the processing operation”. The right to return to its country of origin radioactive waste and other products of processing and reprocessing operations does not exonerate from the authorisation procedure.

6.3. Definitions (Article 3)

Definitions have been modified as follows:

The definitions of “*Radioactive waste*”, “*Spent fuel*”, “*Disposal*” and “*Storage*” have been brought into line with the definitions in the Joint Convention, with some adaptations:

- (a) “*radioactive waste*”: the reference to “Contracting Party” has been replaced by “country of origin and destination” in the first part of the definition; the second part has been adapted so that to cover e.g. situations where scrap metal being shipped is detected as being “radioactive scrap metal” (at the country of origin, transit or destination) and has therefore to be considered by the country concerned as radioactive waste, independently of the “use foreseen by the countries of origin and destination”

This is in line with the statement made by the Commission when Directive 2003/122 was adopted: “The Commission confirms that the need to regulate the question of export and import of undeclared radioactive contaminated metallic material which may contain orphan sources may be addressed in the framework of discussions on an amendment to Council Directive

92/3/EURATOM on the supervision and control of shipments of radioactive waste between Member States and into and out of the Community.”

- (b) “*disposal*”: the words “appropriate facility” have been replaced by “authorised facility”.

“*Shipment*” now covers both shipments of radioactive waste and shipments of spent fuel. This allows a single term to be used to refer to shipments of all these materials and makes it unnecessary to repeat the whole expression. The expression “including transport, loading and unloading for disposal or storage” has been deleted because already implicit in the definition.

“*Intra-community shipments*” and “*extra-community shipments*” are defined, following the new structure of the Directive.

More preciseness is given to the following definitions: “*Holder*”, where the word “intends” has been replaced by “plans” (see comments on Article 4); new definitions are given for “*Country of origin*” and “*Country of destination*”, which replace the existing “place of origin and place of destination”, and for “*Country of transit*”.

“*Territory*” is defined in line with the EESC’s proposal.

The definition of “*Sealed source*” has been taken from Directive 96/29; those of “*disused source*” and “*recognised installation*” correspond to Directive 2003/122.

6.4. Application for shipment authorisation (Article 4)

In Article 4 (1) the expression “intends to carry out a shipment” is replaced by a less ambiguous wording (“has planned to carry out a shipment”). This new expression will avoid in practice difficulties deriving from considerations as for the “intentional” character of a shipment (see point 3.5 SLIM Report), while ensuring the timeliness of applications (so that they are not lodged too far in advance).

Article 4 (2) corresponds to Article 5 (1) of Directive 92/3.

6.5. Transmission of the application to the competent authorities (Article 5)

Article 5 (1) corresponds to Article 4 (1), paragraph 1, second sentence of Directive 92/3.

6.6. Consent and refusal (Article 6)

Terminology has been harmonised, and the word consent is used for Member States of transit and destination, so that it can be distinguished from “authorisation”, to be granted by the Member State of origin.

Contrary to the provision in Article 6 (4) of Directive 92/3, the automatic consent procedure is no longer optional, but shall apply to any shipment. A country of transit or of destination that does not give any reply as regards an intended shipment is deemed to have approved such shipment. Now, acknowledgement of receipt is requested within one month, and the period for notifying acceptance/refusal is extended to 4 months (3 months reply + 1 month extension on request). Both the acknowledgement of receipt and the generalisation of the automatic consent procedure were welcomed by the EESC.

For sake of clarity, and as recommended by the EESC, the reasons that justify a refusal to give consent or for conditions attached to the consent are clearly defined and different for the Member State of destination and for Member States of transit, so that the latter can only invoke the relevant national, Community or international legislation applicable to transport of radioactive material. Lack of a common policy in the nuclear field, this differentiating is necessary in order to safeguard the rights of those countries which have opted for reprocessing. This is further consistent with the recommendation made by the EESC in connection with the possible obstacles to the nuclear common market.

Article 6 (4) corresponds to the provision of Article 16 of Directive 92/3, its wording having been adapted to the structure of the present proposal. It is now clear that the consent procedure also applies to resh Shipments in cases where the initial shipment fails for the reasons detailed in Article 9 (see point 3.12 of the SLIM Report).

6.7. Authorisation of shipments (Article 7)

It is logical to address the stage of authorisation in a separate Article and after the provisions on acceptance.

Article 7 (3) reflects the idea that was already implicit in Article 5 (1) of Directive 92/3.

Article 7 (4) corresponds to Article 5 (2) of Directive 92/3. The 3 year-validity-period is a maximum limit. It is for the authorising authorities to determine, on a case by case basis, the appropriate time validity of the authorisation.

6.8. Acknowledgement of receipt of the shipment (Article 8)

This provision corresponds to Article 9 of Directive 92/3.

6.9. Shipment failure (Article 9)

This provision corresponds to Article 15 of Directive 92/3, but following points have been clarified: (a) the right of the Member State of origin, transit or destination to abort a shipment, in the conditions laid down in the same provision and (b) the obligation of the Member State of origin in connection with take-back responsibility of the holder. In line with Article 27 of the Joint Convention, the possibility to make an alternative safe arrangement is given, for such cases where the taking-back is not justified from the radiological point of view.

The liability of the holder for any additional cost – repackaging, transport e.g. – is justified, because the holder is the primary responsible for the respect of the conditions for which the shipment was authorised and consented.

6.10. Special rules for imports into the Community (Article 10)

Article 10 of Directive 92/3 has been developed and identifies the different steps of the procedure.

6.11. Special rules for transit through the Community (Article 11)

It elaborates on Article 10(2) of Directive 92/3 and identifies the different steps of the procedure.

6.12. Special rules for exports out of the Community (Article 12)

It elaborates on Article 12 of Directive 92/3 and identifies the different steps of the procedure. The consent of the State of destination is required, as resulting from Article 27 of the Joint Convention.

6.13. Prohibited exports (Article 13)

It corresponds to Article 11 of Directive 92/3. It has been amended to take into account that the Fourth Lomé ACP-EEC Convention has now been replaced by the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States (ACP) of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000³, which entered into force on 1 April 2003.

6.14. Use of a standard document (Article 14)

Article 14(2) has been adapted from Article 20 of Directive 92/3. It lays down a general obligation for the use of the standard document, so that individual references to this in the relevant provisions of the Directives are now redundant. The obligation to establish the new standard document by the date of transposition is laid down for the sake of clarity. Article 14(3) clarifies the use of languages, in order to avoid uncertainties. The need for clear rules on the use of languages is especially relevant in a Community of 25 Member States.

This question will subsequently be addressed when establishing the new standard document using the advisory committee procedure laid down in Article 18, possibly by including the different items/headings in all EU languages, or by allowing for the use of bilingual or multilingual official versions combining the language of the country of origin with one or more other EU languages, according to the needs.

6.15. Competent authorities (Article 15)

It corresponds to Article 17 of Directive 92/3, but the reference to the automatic consent procedure has been deleted as a consequence of Article 6 (4).

6.16. Cooperation (Article 16)

Providing for a solution for small producers of radioactive waste is the necessary corollary of recognising the right to prohibit the import of radioactive waste for final disposal.

Further to the considerations in Article 14, a specific duty of co-operation needs to be enounced in order to avoid situations where the authorisation / consent procedure might be misused for dilatory purposes and constitute an unjustified obstacle e.g. to the free movement of spent fuel within the Community. The appropriate Community control mechanisms apply, including, as the case might be, the opening of infringement procedures under Article 141 Euratom.

The recommendations meant in Article 16(3) are intended to develop a safe system of exchange of information in order to facilitate the respect of the procedure laid down in this Directive, while avoiding delays.

³ 2000/483/EC, OJ L 317, 15.12.2000, p. 3.

6.17. Regular reports (Article 17)

In view of the experience of Directive 92/3, reports are only expected every three years. A reference is made to the procedure to be followed (this Proposal does not contain any provision similar to Article 20 of Directive 92/3, but integrates such a reference in Articles 3, 12, 13 and 15).

6.18. Advisory committee (Article 18)

It corresponds to Article 19 of Directive 92/3.

6.19. Transposition (Article 19)

When transposing this Directive, Member States should pay special attention to those aspects that are new, and in particular:

Article 1, as far as it defines the extended scope of the Directive, which is now also applicable to shipments of spent fuel meant for reprocessing and shipments from one point to another of the same Member State but transiting through another country; and it makes reference to the quantities and concentration levels laid down in Directive 96/29.

Article 2, extended provision on reshipments for processing and reprocessing purposes.

Article 6, concerning the modified consent procedure.

Article 9, paragraph 1, on shipment failure, and the equivalent provisions in Articles 10, 11 and 12.

Article 12, on exports out of the Community, which now requires the consent of the competent authorities of the country of destination.

Article 13, including a new reference to the Cotonou ACP-EC Agreement.

Article 14, on the use of the standard document, and in particular paragraph 3, on the use of languages.

6.20. Final provisions (Articles 20, 22 and 23)

Standard texts.

6.21. Transitional provisions (Article 21)

For reasons of legal certainty, the special requirements introduced by this Directive will not be applicable where the application for authorisation had been duly submitted before the date of transposition.

For those applications submitted during the transitional period, Member States should, however, refuse to grant authorisation for several shipments where there is no objective reason for regrouping them in a single application and there is a suspicion that the operator is seeking to avoid the application of the relevant provisions of this Directive, and in particular the need to obtain the consent of the third country of destination.

Proposal for a

COUNCIL DIRECTIVE

on the supervision and control of shipments of radioactive waste and nuclear spent fuel

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Articles 31 (2) and 32 thereof,

Having regard to the proposal from the Commission⁴ drawn up after obtaining the opinion of a group of persons appointed by the Scientific and Technical Committee from among scientific experts in the Member States, in accordance with Article 31 of the Treaty, and after having consulted the European Economic and Social Committee⁵,

Having regard to the opinion of the European Parliament⁶,

Whereas:

- (1) Operations involved in shipments of radioactive waste or spent fuel are subject to a number of requirements under Community and international legal instruments regarding in particular the safe transport of radioactive material and the conditions under which radioactive waste or spent fuel is disposed of or stored in the country of destination.
- (2) Further to these requirements, the health protection of workers and the general public requires that shipments of radioactive waste or spent fuel between Member States and into and out of the Community be subject to a compulsory and common system of prior authorisation.
- (3) Council Directive 92/3/Euratom of 3 February 1992 on the supervision and control of shipments of radioactive waste between Member States and into and out of the Community⁷ established a Community system of strict control and prior authorisation for shipments of radioactive waste that has proved satisfactory. It needs, nevertheless, to be amended in the light of experience in order to clarify and add concepts and definitions, to address situations that had been omitted in the past, to simplify the existing procedure for the shipment of radioactive waste between Member States and to guarantee consistency with other Community and international provisions, and in

⁴ OJ C , , p. .

⁵ OJ C , , p. .

⁶ OJ C , , p. .

⁷ OJ L 35, 12.2.1992, p. 24.

particular with the Joint Convention for the safe management of spent fuel and radioactive waste, to which the Community acceded on 2 January 2006).

- (4) In the framework of the Fifth Phase of the SLIM (Simpler Legislation for Internal Market) initiative, a working group of representatives of Member States and of users was set up in order to address a number of concerns expressed by users of Directive 92/3/Euratom, while bringing it into line with current international rules and instruments.
- (5) The procedure laid down in Directive 92/3 has been applied in practice only to shipments of spent fuel for which no use is intended, considered thus as “radioactive waste” for the purposes of the Directive. From a radiological point of view, excluding from such supervision and control procedure spent fuel where it is intended for reprocessing is not justified. It is therefore appropriate to extend the scope of this Directive to all shipments of spent fuel, whether it is intended for disposal or for reprocessing.
- (6) Lack of a Community common fuel cycle policy, each Member State remains responsible for the choice of its own policy on the management of the nuclear waste and spent fuel that are under its jurisdiction; the provisions of this Directive should therefore be without prejudice to the right of Member States to export their spent fuel for reprocessing and to their right to refuse the entry into their territory of radioactive waste for final treatment or disposal, except in the case of reshipment.
- (7) The adoption of Council Directive 2003/122/Euratom of 22 December 2003, on the control of high-activity sealed radioactive sources and orphan sources⁸, makes it necessary to adapt the wording of the provisions on reshipment of radioactive sealed sources.
- (8) Simplification of the existing procedure should not hamper the existing rights of the Member States to object to or set conditions to a shipment of radioactive waste which require their approval. Objections should not be arbitrary and should be founded on relevant national or international provisions that can be easily identified. Relevant legislation is not limited to sectoral transport legislation. This Directive should be without prejudice to the rights and obligations of Member States under international law, and in particular to the exercise, by ships and aircraft of maritime, river and air navigation rights and freedoms, as provided for in international law.
- (9) The possibility for a Member State of destination or of transit to refuse the automatic procedure for granting consent to shipments imposes an unjustified administrative burden and generates uncertainty. The mandatory acknowledgement of receipt of the application by the authorities of the countries of destination and transit, together with the extension of the period for granting consent, should allow tacit approval to be assumed with a high degree of certainty.
- (10) To protect human health and the environment against the dangers arising from radioactive waste, account must be taken of risks occurring outside the Community. In the case of radioactive waste and spent fuel leaving the Community, the third country

⁸ OJ L 346 , 31.12.2003, p. 57

of destination should not only be informed of the shipment, but should also give its consent on it.

- (11) For the needs of the provisions of this Directive and in the light of the past experience it is appropriate to provide for the adaptation of the existing standard document. For the sake of clarity the obligation to establish the new standard document by the date of transposition of this Directive should be laid down. However, should this deadline not be met, transitional provisions should provide for the use of the existing one. Moreover, clear rules on the use of languages should allow for legal certainty and prevent unjustified delays.
- (12) Periodical reporting from Member States to the Commission and from this to the European Parliament, to the Council and to the European Economic and Social Committee should provide a useful overview of authorisations given Community wide and identifies possible difficulties encountered in practice by the Member States, and solutions applied.
- (13) Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation⁹, applies *inter alia* to the transport, import to and export from the Community of radioactive substances and provides for a reporting and authorization system of practices involving ionizing radiation. Those provisions are therefore relevant to the field covered by this Directive.
- (14) In the light of the foregoing, it is necessary, for reasons of clarity, to repeal and replace Directive 92/3/Euratom. This Directive must not prejudice the obligations of the Member States concerning the deadlines for transposition into national law and application of the repealed Directive,

HAS ADOPTED THIS DIRECTIVE:

Chapter 1 **Preliminary provisions**

Article 1 **Subject matter and scope**

1. This Directive lays down a Community system of supervision and control of transboundary shipments of radioactive waste and spent fuel, so as to guarantee an adequate protection of the population.
2. This Directive shall apply to transboundary shipments of radioactive waste or spent fuel whenever :
 - (a) the country of origin or the country of destination or any country of transit is within the Community, and

⁹ OJ L 159, 29.6.1996, p. 1

- (b) the quantities and concentration of the consignment exceed the levels laid down in paragraph 2, points (a) and (b) of Article 3 of Council Directive 96/29/Euratom as it may be amended or replaced.
3. This Directive shall not apply to shipments of disused sources to a supplier or manufacturer of radioactive sources or to a recognised installation.

Article 2

Reshipments related to processing and reprocessing operations

This Directive shall not affect the right of a Member State or an undertaking in the Member State to which radioactive waste is to be shipped for processing to return the radioactive waste and other products of the processing operation after treatment to its country of origin. Nor shall it affect the right of a Member State or an undertaking in that Member State to which spent fuel is to be shipped for reprocessing to return to its country of origin radioactive waste and other products of the reprocessing operation.

Article 3

Definitions

For the purpose of this Directive the following definitions shall apply:

- (1) ‘*radioactive waste*’ means radioactive material in gaseous, liquid or solid form for which no further use is foreseen by the countries of origin and destination, or by a natural or legal person whose decision is accepted by these countries, and/or which is controlled as radioactive waste by a regulatory body under the legislative and regulatory framework of the countries of origin, transit and destination;
- (2) ‘*spent fuel*’ means nuclear fuel that has been irradiated in and permanently removed from a reactor core;
- (3) ‘*shipment*’ means the whole of operations involved in moving radioactive waste or spent fuel from the country or the Member State of origin to the country or the Member State of destination;
- (4) “*intra-community shipment*” means a shipment carried out where the country of origin and the country of destination are Member States;
- (5) “*extra-community shipment*” means a shipment carried out where the country of origin and/or the country of destination are third countries;
- (6) ‘*disposal*’ means the emplacement of radioactive waste or spent fuel in an authorised facility without the intention of retrieval;
- (7) ‘*storage*’ means the holding of radioactive waste or spent fuel in a facility that provides for its containment, with the intention of retrieval;
- (8) ‘*holder*’ means any natural or legal person who, before carrying out a shipment of radioactive waste or spent fuel, has the legal responsibility for such materials and plans to carry out a shipment to a consignee;

(9) *'consignee'* means any natural or legal person to whom radioactive waste or spent fuel is shipped;

(10) *'country or Member State of origin'* and *'country or Member State of destination'* respectively mean any country or Member State from which a shipment is planned to be initiated or is initiated, and any country or Member State to which a shipment is planned or takes place;

(11) *'country or Member State of transit'* means any country or Member State other than the country or the Member State of origin or the country or the Member State of destination, through which territory a shipment is planned or takes place;

(12) *'territory'* means a State's land territory, airspace and territorial waters, with exclusion of its exclusive economic zone.

(13) *'competent authorities'* means any authority which, under the law or regulations of the countries of origin, transit or destination, are empowered to implement the system of supervision and control of shipments of radioactive waste or spent fuel;

(14) *'sealed source'* means a source whose structure is such as to prevent, under normal conditions of use, any dispersion of the radioactive substances into the environment;

(15) *'disused source'* means a sealed source which is no longer used or intended to be used for the practice for which authorisation was granted;

(16) *'recognised installation'* means a facility located in the territory of a country authorised by the competent authorities of that country in accordance with national law for the long-term storage or disposal of sealed sources or an installation duly authorised under national law for the interim storage of sealed sources.

Chapter 2 **Intra-Community Shipments**

Article 4

Application for shipment authorisation

1. A holder who has planned to carry out an intra-Community shipment of radioactive waste or spent fuel or to arrange for such a shipment to be carried out shall submit an application for authorisation to the competent authorities of the Member State of origin.
2. The application may be sent in respect of more than one shipment, provided that:
 - (a) the radioactive waste or the spent fuel to which it relates essentially has the same physical, chemical and radioactive characteristics,
 - (b) the shipments are to be made from the same holder to the same consignee and involve the same competent authorities, and

- (c) where shipments involve transit through third countries, such transit is via the same frontier post of entry to and/or exit from the Community and via the same frontier post of the third country or countries concerned, unless otherwise agreed between the competent authorities concerned.

Article 5

Transmission of the application to the competent authorities

The competent authorities of the Member State of origin shall send the applications referred to in Article 4 for consent to the competent authorities of the Member State of destination and of the Member States of transit, if any.

Article 6

Consent and refusal

1. Not later than one month from the date of receipt of the duly completed application by the competent authorities of the Member State of destination and of any Member State of transit, they shall issue an acknowledgement of receipt.

Not later than three months from the date of receipt of the duly completed application the competent authorities of the Member State of destination and of any Member State of transit shall notify the competent authorities of the country of origin of their consent or of the conditions which they consider necessary or of their refusal to grant consent.

However, the competent authorities of the Member State of destination or of any Member State of transit may request a further period of not more than one month in addition to the period referred to in the second subparagraph to make their position known.

2. If upon expiry of the periods referred to in the second and third subparagraphs of paragraph 1 no reply has been received from the competent authorities of the Member State of destination and/or the intended Member States of transit, those countries shall be deemed to have given their consent for the shipment requested provided that the acknowledgement of receipt referred to in paragraph 1 has been received from those countries.
3. Reasons shall be given by Member States for any refusal to grant consent, or for conditions attached to consent, which shall be based:
- a) for Member States of transit, on the relevant national, Community or international legislation applicable to transport of radioactive material;
 - b) for the Member State of destination, on relevant legislation applicable to the management of radioactive waste or spent fuel and on relevant national, Community or international legislation applicable to transport of radioactive material.

Any conditions required by the competent authorities of the Member States, whether they are the country of transit or of destination, may not be more stringent than those laid down for similar shipments within those Member States.

4. The Member State or States which gave consent to transit for a given shipment may not refuse to give consent to reshipment in the following cases:
 - (a) When the initial consent concerned material being shipped for treatment or reprocessing purposes, if the reshipment concerns radioactive waste or other products equivalent to the original material after treatment or reprocessing, and all relevant legislation is respected,
 - (b) under the circumstances described in Article 9, if the reshipment is undertaken on the same conditions and with the same specifications.

Article 7

Authorisation of shipments

1. If all the consents necessary for shipment have been granted, the competent authorities of the Member State of origin shall be entitled to authorise the holder to carry out the shipment and shall inform the competent authorities of the Member State of destination and of any Member State or third country of transit accordingly.
2. The authorisation referred to in paragraph 1 shall not in any way affect the responsibility of the holder, the transporter, the owner, the consignee or any other natural or legal person involved in the shipment.
3. A single authorisation may cover more than one shipment, where the conditions referred to in Article 4 (2) are met.
4. Any authorisation shall be valid for a period of not more than three years.

When establishing this period of validity, Member States shall take into account any conditions set out in the consent by the Member States of destination or of transit.

Article 8

Acknowledgement of receipt of the shipment

1. Within 15 days of receipt, the consignee shall send the competent authorities of its Member State an acknowledgement of receipt of each shipment.
2. The competent authorities of the Member State of destination shall send copies of the acknowledgement to the Member State of origin and any Member State or third country of transit.
3. The competent authorities of the Member State of origin shall send a copy of the acknowledgement to the original holder.

Article 9
Shipment failure

1. The Member State of destination, origin or transit may decide that the shipment may not be completed if the conditions for shipment are no longer complied with in accordance with the provisions of this Directive, or are not in accordance with the authorisations or consents issued pursuant to this Directive.

Such Member State shall forthwith inform of this decision the competent authorities of the other Member States involved in the shipment.

2. Where a shipment cannot be completed or if the conditions for shipment are not complied with in accordance with the provisions of this Directive, the competent authorities of the Member State of origin shall ensure that the radioactive waste or the spent fuel in question is taken back by the holder, unless an alternative safe arrangement can be made. They shall ensure that the person responsible for the shipment takes corrective safety measures where necessary.
3. The holder shall be liable for costs arising in cases where the shipment cannot or may not be completed.

Chapter 3
Extra-Community shipments

Article 10
Imports into the Community

1. Where radioactive waste or spent fuel falling within the scope of this Directive is to enter the Community from a third country and the country of destination is a Member State, the consignee shall submit an application for authorisation to the competent authorities of that Member State. The application may be sent in respect of more than one shipment, under the conditions referred to in Article 4 (2).

It shall include evidence that the consignee has concluded an arrangement with the holder established in the third country, and accepted by the competent authorities of that third country, obliging that holder to take back the radioactive waste or the spent fuel where a shipment cannot be completed in accordance with this Directive, as provided for in paragraph 5 of this Article.

The consignee shall be liable for costs arising in cases where the shipment cannot or may not be completed.

2. The competent authorities of the Member State of destination shall send the application referred to in paragraph 1 for consent to the competent authorities of the Member States of transit, if any.

Article 6 shall apply.

3. If all the consents necessary for the shipment have been granted, the competent authorities of the Member State of destination shall be entitled to authorise the

consignee to carry out the shipment and shall inform the competent authorities of any Member State or third country of transit accordingly.

Paragraphs 2 to 4 of Article 7 shall apply.

4. Within 15 days of receipt of the shipment, the consignee shall send the competent authorities of the Member State of destination an acknowledgement of receipt of each shipment. The competent authorities of the Member State of destination shall send copies of the acknowledgement to the country of origin and to any Member State or third country of transit.
5. The Member State of destination or any Member State of transit may decide that the shipment may not be completed if the conditions for shipment are no longer complied with in accordance with the provisions of this Directive, or are not in accordance with the authorisations or consents issued pursuant to this Directive. Such Member State shall forthwith inform the competent authorities of the country of origin of this decision. The consignee will be liable for costs arising in cases where the shipment cannot or may not be completed.

Article 11

Transit through the Community

1. Where radioactive waste or spent fuel is to enter the Community from a third country and the country of destination is not a Member State, the person who has the responsibility for managing the shipment within the Member State through whose customs post the radioactive waste is first to enter the Community (“first Member State of transit”) shall submit an application for authorisation to the competent authorities of that Member State. The application may be sent in respect of more than one shipment, under the conditions referred to in Article 4(2).

It shall include evidence that the consignee established in the third country has concluded an arrangement with the holder established in the third country, and accepted by the competent authorities of the latter, obliging that holder to take back the radioactive waste or the spent fuel where a shipment cannot be completed in accordance with this Directive, as provided for in paragraph 5 of this Article.

2. The competent authorities of the first Member State of transit shall send the application referred to in paragraph 1 for consent to the competent authorities of other Member States of transit, if any.

Article 6 shall apply.

3. If all the consents necessary for shipment have been granted, the competent authorities of the first Member State of transit shall be entitled to authorise the responsible person referred to in paragraph 1 to carry out the shipment and shall inform the competent authorities of any other Member State or third country of transit accordingly.

Paragraphs 2 to 4 of Article 7 shall apply.

4. The responsible person referred to in paragraph 1 shall notify the competent authorities of the first Member State of transit that the radioactive waste or spent fuel has reached its destination in the third country within 15 days of the date of arrival and shall indicate the last customs post in the Community through which the shipment passed.

The notification shall be substantiated by a declaration or certification of the consignee stating that the radioactive waste or spent fuel has reached its proper destination and indicating the customs post of entry in the third country.

5. A Member State of transit may decide that the shipment may not be completed if the conditions for shipment are no longer complied with in accordance with the provisions of this Directive, or are not in accordance with the authorisations or consents issued pursuant to this Directive. Such Member State shall forthwith inform the competent authorities of the country of origin of this decision. The responsible person referred to in paragraph 1 shall be liable for costs arising in cases where the shipment cannot or may not be completed.

Article 12

Exports out of the Community

1. Where radioactive waste or spent fuel is to be exported from the Community to a third country, the holder shall submit an application for authorisation to the competent authorities of the Member State of origin. The application may be sent in respect of more than one shipment, under the conditions referred to in Article 4 (2).
2. The competent authorities of the Member State of origin shall:
 - (a) notify the authorities of the country of destination and ask their consent, prior to such a shipment;
 - (b) send the application referred to in paragraph 1 for consent to the competent authorities of the Member States of transit, if any; Article 6 shall apply.
3. If all the consents necessary for shipment have been granted, the competent authorities of the Member State of origin shall be entitled to authorise the holder to carry out the shipment and shall inform the competent authorities of the third country of destination and of any Member State or third country of transit accordingly.

Paragraphs 2 to 4 of Article 7 shall apply.

4. The holder shall notify the competent authorities of the Member State of origin that the radioactive waste or spent fuel has reached its destination in the third country within 15 days of the date of arrival and shall indicate the last customs post in the Community through which the shipment passed.

The notification shall be substantiated by a declaration or certification of the consignee stating that the radioactive waste or spent fuel has reached its proper destination and indicating the customs post of entry in the third country.

5. The Member State of origin or any Member State of transit may decide that the shipment may not be completed if the conditions for shipment are no longer complied with in accordance with the provisions of this Directive, or are not in accordance with the authorisations or consents issued pursuant to this Directive. Such Member State of transit shall forthwith inform the competent authorities of the Member State of origin of this decision. Article 9, paragraph 2, applies. The holder will be liable for costs arising in cases where the shipment cannot or may not be completed.

Article 13

Prohibited exports

1. The competent authorities of Member States shall not authorise shipments:
 - (a) to a destination south of latitude 60° south, or
 - (b) to a State party to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, (Cotonou ACP-EC Agreement) which is not a Member State without prejudice to Article 2, or
 - (c) to a third country which does not, in the opinion of the competent authorities of the Member State of origin, in accordance with the criteria referred to in paragraph 2, have the administrative and technical capacity and regulatory structure to manage the radioactive waste or spent fuel safely. In so doing Member States should take duly into account any relevant information from other Member States in this respect.
2. The Commission shall, in accordance with the procedure laid down in Article 18, establish criteria facilitating Member States to evaluate whether requirements for exports are met.

Chapter 4

General provisions

Article 14

Use of a standard document

1. A standard document shall be used for all shipments within the scope of this Directive.
2. The Commission shall, in accordance with the procedure laid down in Article 18, establish the standard document which shall be published in the *Official Journal of the European Union* not later than (*same date as Article 19(1)-transposition date*). If necessary, it shall be updated following the same procedure.
3. The application for authorisation shall be completed and any further documentation and information referred to in Articles 7, 10, 11 and 12 shall be supplied in a

language that is acceptable to the competent authority of the Member State to whom the application for authorisation is submitted in accordance with this Directive.

An authenticated translation shall be supplied by the holder at the request of the competent authorities of the country of destination or transit in a language acceptable to them.

4. Any additional requirements for authorising a shipment shall be attached to the standard document.
5. Without prejudice to any other accompanying documents required under other relevant legal provisions, the completed standard document certifying that the authorisation procedure has been duly complied with shall accompany each shipment falling under the scope of this Directive, including in cases where the authorisation relates to more than one shipment in a single document.
6. These documents shall be available to the competent authorities of the country of origin and destination and any country of transit.

Article 15

Competent authorities

Member States shall forward to the Commission not later than (*same date as Article 19(1)*) the name(s) and the address(es) of the competent authorities and all necessary information for rapidly communicating with such authorities.

Member States shall regularly forward to the Commission any changes to such data.

The Commission shall communicate this information, and any changes thereto, to all the competent authorities in the Community.

Article 16

Co-operation

1. Member States shall promote agreements in order to facilitate the safe management, including the final disposal, of radioactive waste from countries that produce it in small quantities and where the establishment of appropriate facilities would not be justified from the radiological point of view.
2. Each Member State shall ensure that its competent authorities cooperate and communicate with the competent authorities of other relevant Member States or third countries so that to avoid undue delays in the procedures laid down by this Directive.
3. The Commission shall, in accordance with the procedure laid down in Article 18, establish recommendations for the secure and effective system of transmission of the documents and information relating to the provisions of this Directive.
4. Any unjustified delays and/or lack of cooperation by the competent authorities of another Member State shall immediately be reported to the Commission.

Article 17
Regular reports

By (*three years after the date referred to in Article 19(1)*) and every three years afterwards, Member States shall forward to the Commission reports on the implementation of this Directive.

They shall supplement these reports by information on the situation with regard to shipments within their respective territories.

On the basis of these reports, the Commission shall, in accordance with the procedure laid down in Article 18, establish a summary report for the European Parliament, the Council and the European Economic and Social Committee.

Article 18
Advisory committee

In performing the tasks laid down in Articles 13(2), 14(2), 16(3) and in the third paragraph of Article 17 the Commission shall be assisted by a Committee of an advisory nature composed of representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the Chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes. Each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

Article 19
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before (*two years after the date of entry into force*). They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive together with a table showing how the provisions of this Directive correspond to the national provision adopted.

Article 20

Repeal

Directive 92/3/Euratom is hereby repealed with effect from *(same date as the date set in Article 19(1))*, without prejudice to the obligations of the Member States relating to the time limit for transposition into national law and application of that Directive.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in the Annex.

Article 21

Transitional provisions

1. Where the application for authorisation has been duly approved by or submitted to the competent authorities of the country of origin before *(same date as Article 19(1))* Directive 92/3/Euratom shall apply to all shipment operations covered by the same authorisation.
2. When deciding on applications for authorisation submitted before *(same date as Article 19(1))*, for more than one shipment of radioactive waste to a third country of destination, the Member State of origin shall take account of all relevant circumstances, and in particular:
 - (a) the planned time schedule for carrying out all shipments covered by the same application;
 - (b) the justification for including all shipments in the same application;
 - (c) the appropriateness of granting authorisation for a number of shipments lower than that covered by the application.
3. Until the standard document provided for in Article 14 of this Directive becomes available, the standard document established by Commission Decision 93/552/Euratom¹⁰ shall be used *mutatis mutandis* for the purposes of this Directive.

¹⁰ OJ L 268, 29.10.1993, p. 83.

Article 22
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 23

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

ANNEX

Correlation Table

Directive 92/3/Euratom	This Directive	Nature of modification ¹¹
	Article 1(1)	New provision
Article 1 (1)	Article 1 (2)	Amended
Article 2	Article 3	Adapted
Article 3	First recital	Adapted
Article 4 (1) first sentence	Article 4 (1)	Adapted
Article 4 (1) second sentence	Article 5 (1)	Adapted
Article 4 (2)	Article 14 (1)	Adapted
Article 4 (3)	Article 5 (2)	
Article 5 (1)	Article 4 (2)	Adapted
Article 5 (2)	Article 7 (4)	Adapted
Article 6 (1) first subparagraph	Article 6 (1) second paragraph	Amended
Article 6 (1) second subparagraph	Article 14 (1)	Adapted
Article 6 (2) first subparagraph	Article 6 (3) second subparagraph	Amended
Article 6 (2) second subparagraph	Article 6 (3) first subparagraph	Amended
Article 6 (3)	Article 6 (1) third subparagraph	Adapted
Article 6 (4)	Article 6 (2)	Amended
Article 7 (1)	Article 7 (1)	Adapted
Article 7 (2), first sentence	Article 14 (1)	Adapted

¹¹ "Adapted" indicates that the wording has been reformulated without changing the scope of the text of the repealed Directive. Changes to the scope of the provisions of the repealed Directive are denoted by the word "Amended".

Article 7 (2), second sentence	Article 14 (4)	Adapted
Article 7 (3)	Article 7 (2)	
Article 8 (1)	Article 14 (5)	Adapted
Article 8 (2)	Article 14 (6)	
Article 9 (1), first part of the sentence	Article 8 (1)	Adapted
Article 9 (1), end part of the sentence	Article 14 (1)	Adapted
Article 9 (2)	Article 8 (2)	
Article 10 (1)	Article 10 (1)	Adapted
Article 10 (1), end of the first sentence	Article 14 (1)	Adapted
Article 10 (2)	Article 11	Adapted
Article 10 (3) reference to paragraph 1	Article 10 (1)	Adapted
Article 10 (3) reference to paragraph 2	Article 10 (2)	Adapted
Article 11	Article 13 (1)	Adapted
Article 12 (1)	Article 12 (2)	Amended
Article 12 (2)	Article 12 (3)	Adapted
Article 12 (3)	Article (12 (3)	
Article 12 (4)	Article 14 (1)	Adapted
Article 12 (5)	Article 12 (4)	Adapted
Article 12 (6)	Article 12 (4)	Adapted
Article 13 (1)	Article 1 (3) first sentence	Amended
Article 13 (2)	Article 1 (3) second sentence	
Article 14	Article 2	Amended

Article 15 (1)	Article 9 (2)	Adapted
Article 15 (2)	Article 10 (1)	Adapted
Article 16, first indent	Article 6 (4) (a)	Adapted
Article 16, second indent	Article 6 (4) (b)	Adapted
Article 17 (1)	Article 15 (1)	Adapted
Article 17 (2)	Article 15 (2)	
Article 17 (3)	Article 15 (3)	
Article 18 (1)	Article 17 (1)	Adapted
Article 18 (2)	Article 17 (2)	
Article 18 (3)	Article 17 (3)	
Article 19 (1)	Article 18 (1)	Adapted
Article 19 (2)	Article 18 (2)	
Article 19 (3)	Article 18 (3)	
Article 19 (4)	Article 18 (4)	
Article 20, first indent	Article 14 (2)	Adapted
Article 20, second indent	Article 14 (2)	Adapted
Article 20, third indent	Article 14 (2)	Adapted
Article 20, fourth indent	Article 13 (2)	Adapted
Article 20, fifth indent	Article 17 (3)	Adapted
Article 21	Article 19	Adapted
Article 22	Article 23	
	Article 9 (1)	New provision
	Article 12 (1)	New provision
	Article 12 (5)	New provision
	Article 16	New provision
	Article 14 (3)	New provision

	Article 20	New provision
	Article 21	New provision
	Article 22	New provision